

TRANSMITTAL FOR U.S. PATENT APPLICATION
UNDER 37 CFR §1.53(b)

MAIL STOP PATENT APPLICATION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attorney's Docket: 074901.0103
Express Mail Receipt No
EV 323453237 US

Sir:

Transmitted herewith for filing is the original patent application of:

Inventor: Kelly W. Adams

Filed: November 12, 2003

For: **APPARATUS AND METHOD FOR COLORING SKIN**

Enclosed are:

- (1) 14 pages of Specification, including 20 Claims and Abstract;
- (2) 2 pages of Executed Declaration and Power of Attorney;
- (3) 1 page of Verified Statement (Declaration) claiming Small Entity

Status under 37 CFR §1.27(a)(c) – Independent Inventor


- (4) 2 sheets of Formal Drawings;
- (5) 7 pages of Petition to Make Special Under 37 CFR §1.102(d)
- (6) a check in the amount of \$130.00 to satisfy Petition fees;
- (7) 2 pages of Information Disclosure Statement;
- (8) 1 page of PTO 1449 Form with reference attached
- (9) 1 Baker Botts, LLP acknowledgment return receipt postcard
- (10) 1 page Certificate of Mailing by Express Mail; and
- (11) This Transmittal with Filing Fee Calculation Form (2 pages) with attached patent application filing fee in the amount of \$385.00.



FEE CALCULATION					FEE
	NUMBER		NUMBER EXTRA	SMALL ENTITY RATE	SMALL ENTITY BASIC FEE \$385.00
Total Claims	20	20	0	X \$9. =	-0-
Independent Claims	3	3	0	X \$43.=	-0-
TOTAL FILING FEE =					\$385.00

Enclosed is a check in the amount of **\$385.00** for filing fee. Please charge any additional fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

BAKER BOTTS L.L.P.
Attorneys for Applicants



Christopher W. Kennerly
Registration No 40,675

Date: November 12, 2003

Correspondence Address:

 X Customer Number: **05073**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Kelly W. Adams
Date Filed: November 12, 2003
Title: **APPARATUS AND METHOD FOR COLORING SKIN**

MAIL STOP PATENT APPLICATION

Honorable
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that the attached Non-Provisional Utility Patent Application (14 pages, including Specification, 20 Claims, and Abstract), Application Fee Transmittal Form (2 pages), 2 sheets of Formal Drawings, Petition to Make Special under 37 C.F.R. §1.102(d) (7 pages), executed Declaration and Power of Attorney (2 pages); executed Verified Statement claiming Small Entity Status-Independent Inventor (1 page), Information Disclosure Statement (2 pages), PTO-1449 Form (1 page) with reference attached (acco-bound), check in the amount of \$385.00 for application filing fee, check in the amount of \$130.00 for Petition to Make Special Fee, this Certificate of Mailing by Express Mail, and Baker Botts L.L.P. acknowledgment return postcard are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on this 12th day of November, 2003 addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

EV323453237US

Willie Jiles

Willie Jiles

Express Mail Receipt
No. EV 323453237 US
Attorney Docket No. 074901.0103

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Kelly W. Adams
Serial No.: Unassigned
Filing Date: November 12, 2003
Group Art Unit: Unassigned
Title: *APPARATUS AND METHOD FOR COLORING SKIN*

Mail Stop Patent Application

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Petition to Make Special Under 37 C.F.R. § 1.102(d)

Applicant submits this Petition to have this Application granted special status pursuant to under 37 C.F.R. § 1.102(d).

A. **Single Invention Requirement**

Applicant believes that all claims are directed to a single invention. Should the U.S. Patent and Trademark Office determine that all of the claims presented are not obviously directed to a single invention, Applicant will make an election without traverse as a prerequisite to the grant of special status.

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B. Applicant Has Caused A Pre-Examination Search To Be Made

Applicant, through his attorneys, has caused a pre-examination search to be conducted. The search was conducted by the professional search firm PatPro of Arlington, Virginia. The search included Class 132, Subclasses 112, 113, 114, 207, 208 and 320, and Class 401, Subclasses 28, 35, 49 and 50. The following references were uncovered by this search:

U.S. Patent No.	Inventor	Title
1,707,665	R. P. Julien	Comb for Coloring or Dyeing the Hair
2,139,904	F. H. Merrill	Applicator for Hair and Scalp Tonics or the Like
2,577,921	R. Samel et al.	Means for Dyeing, Bleaching, and Treating Living Hair
3,164,906	R. S. Andaloro	Multiple Pen Combination
3,683,942	McKay	Cartridge Comb
3,750,292	Dodge	Marking Device
3,828,802	Spanel	Dry Color Applicator for Hair
5,056,480	Murray, Sr.	Liquid Comb Combination and Method for its Manufacture
5,960,802	Sakai	Pen-Type Chemical Applicator
6,033,139	Dutcher	Multiple Pen Holder and Drawing Aid
6,260,557 B1	Yarbrough	Hair Colorant Applicator Comb and Method
US 2001/0006653 A1	Roulier et al.	Solid Cosmetic Composition and Uses Thereof
Foreign Patent No.	Inventor	Title
EP 0168741 A1	Busch et al.	Applicator for Treating Hair

One copy of each reference is enclosed with the Information Disclosure Statement submitted herewith. These references are discussed and distinguished below.

C. Detailed Discussion of the References

U.S. Patent No. 1,707,665 to Julien discloses a comb for coloring or dying the hair. The patent relates to improvements in combs for receiving crayons of different colors for the purposes of dying or changing the color of the hair. The comb member is formed with a recess or pocket portion that is located between the opposite sides of the teeth of the comb, and in this recess or pocket is placed a stick of crayon which may be of any desired color. The recess or pocket portion has communication with the openings or spaces between the teeth through which the hair passes in the usual manner when the comb is used, whereby the hair is brought into direct contact with the colored crayon. An opposite inner surface of the recessed portion of the comb is formed with grooves for receiving a cover plate after the crayon is inserted. This plate permits the insertion and removal of the crayon. The plate is

inserted through an opening in the end opposite the handle part of the comb. The cross-sectional shape of the crayon is substantially wedge-shaped.

U.S. Patent No. 2,139,904 to Merrill discloses an applicator for hair and scalp tonics or the like. The patent is particularly concerned with applicators of the comb type. Capillary bores or passageways extend longitudinally of the comb teeth from orifices in the tooth tips, the upper ends of such bores being vented to the atmosphere. It is necessary only to dip the tooth tips into a shallow tray of treating solution, whereupon a substantial amount of fluid is drawn by capillary attraction into the bores, where it remains until the comb teeth are passed through the hair and into contact with the scalp. Then, by drawing the comb through the hair with the tooth tips held against the scalp, the solution is drawn from the bores by reason of the wiping contact and is deposited over the scalp adjacent the roots of the hair.

U.S. Patent No. 2,577,921, to Samel et al. discloses a comb or brush for dyeing, bleaching or treating hair made of a mass of methyl cellulose cut to form a comb or cut into comparatively thin bars or rods suitably attached to a backing to form a brush. The elongated elements thus produced are free at one of their ends and mounted in a base at their other ends in generally aligned relationship. When the comb or brush is used for dyeing or bleaching hair the mass of methyl cellulose has incorporated in it a suitable dye or bleaching substance. The methyl cellulose serves as a carrier for the dye or bleaching substance. In addition to being water soluble, the methyl cellulose is chemically inert, not reacting with the dye or bleaching substance, and is tough and elastic.

U.S. Patent No. 3,164,906 to Andaloro discloses a multiple pen combination. A combination case and frame includes a base member and a cover member. The base member is generally in the form of a rectangular six-sided figure with a top removed. It has end walls, side walls, and a bottom wall with uniformly spaced holes through which ball-point writing elements project with their ball points in parallel relation, as shown in FIGURE 2.

U.S. Patent No. 3,683,942 to McKay discloses a cartridge comb having a detachable toothed refill cartridge element with a coloring or hair dressing stick element provided therein for automatically treating or coloring the hair by passing the comb therethrough. The toothed cartridge element is configured to permit the hair to come into contact with the coloring or hair dressing stick contained therein. The stick slowly releases coloring or hair dressing to hair coming into contact therewith. The cartridge element is selectively replaceable when the coloring or hair dressing stick element has been expended. The use of the replaceable

cartridge element avoids the necessity for directly handling the coloring sticks. As illustrated in FIGURE 9, the coloring stick 20 is generally rectangularly shaped.

U.S. Patent No. 3,750,292 to Dodge discloses a marking device to facilitate applying guidelines, texturing, script writing, and the like to a working surface such as drafting paper, architectural plans, or any graphic media. Means are provided to hold a plurality of marking elements in equally spaced-apart relationship with means to selectively adjust the spacing between the extending ends of the elements. An example of the marking elements are sharpened pencil leads.

U.S. Patent No. 3,828,802 to Spanel discloses a dry color applicator for hair. Compact enclosures are adapted to receive and fully utilize multi-sided blocks of wax including coloring material and intimate mixture therein for pressure-coloring human hair. In one embodiment, the block of wax is rotatable within the enclosure so that in turn different sides of the block of wax can be aligned with and then moved through an open end of the enclosure. In another embodiment, the enclosure has a plurality of open ends to enable different sides of the block of wax in turn to be pushed through the open ends for pressure application to the hair. Brush and comb attachments may be rigidly, pivotally, or releasably attached to the container in a position substantially coextensive and adjacent an open-end portion for stroking the hair as the wax is press-applied.

U.S. Patent No. 5,056,480 to Murray, Sr. discloses a liquid comb combination and method for its manufacture. The liquid comb combination includes an elongated reservoir containing a plurality of compartments and extending in the same direction as the elongated reservoir. Each has an opening proximate the handle of the combination. A set of hollow comb teeth extend from each of the plurality of compartments, and separately sized apertures for each set of comb teeth are configured to dispense liquid conditioned on respective sizings of the separately sized apertures.

U.S. Patent No. 5,960,802 to Sakai discloses a pen-type chemical applicator that is provided for easily and discretely applying a chemical such as a hair grower or cosmetic chemical. A pen-tip member is provided at a distal end portion of a sleeve-like pen-like body which may be gripped by one hand and which contains a liquid, semisolid, paste-like, sol-like or gel-like hair grower. The hair grower ejects or soaks out to the pen-tip member or to the vicinity of the pen-tip member and the sharpness of the pen-tip member is set to a stimulus that does not give feeling of pain to a scalp when the pen-tip member is brought into contact

with the scalp. The pen-tip member is constructed so that, when side portions or parts of the pen-like body are pressed by fingers and the pen-tip member is brought into contact with a scalp to rotate the ball member, the hair grower ejects or soaks out to the pen-tip member or to the vicinity of the pen-tip member. In one embodiment, the shape of the pen-tip member is formed into a curved shape having a sharpness for imparting a stimulus yet sufficiently dull so as not to inflict pain when pressed against the scalp during application of the chemical to the scalp. In another embodiment, a pen-tip member is constructed in a pen-tip structure which has been adapted to a pen-type correction liquid product or the like, as shown in FIGURE 4.

U.S. Patent No. 6,033,139 to Dutcher discloses a multiple pen holder and drawing aid in a generally rectangular device or casing which has holes on one side and retaining elements in the casing to hold drawing instruments, such as dry erase markers, pens, pencils, and similar instruments. The retaining elements and holes are arranged such that the drawing instruments are retained in the casing with the tip ends extended outwardly through the holes. The user may then hold the drawing aid in one hand to draw multiple parallel lines on a drawing surface. The casing has a top casing element and bottom casing element which are hinged relative to each other and latched for closure. Thus, the casing may be opened in a clam-shell manner for insertion and removal of drawing instruments.

U.S. Patent No. 6,260,557 B1 to Yarbrough discloses a hair colorant applicator comb and method, which may be in the form of a hollow comb with a threaded receiver top that accepts standard plastic bottles of hair colorant in the inverted position, as illustrated in FIGURE 9. The teeth of the comb are in the form of tubes. A hollow channel in each tube of the comb terminates in an orifice at the tip of each tube. Hair colorant flows from the bottle, through the body of the comb, through the channels in the tubes, and exits the tip of the tubes. This supplies the colorant at the base of the hair near the scalp to maintain uniform hair coloring as the hair grows. Newly emerged uncolored hair near the scalp can be colored without deepening the color of the rest of the hair. The user squeezes the bottle of colorant as it is applied to control the flow rate.

U.S. Patent Application Publication US 2001/0006653 A1, published July 5, 2001 in the name of Roulier et al., discloses a solid cosmetic composition and uses thereof. The patent application discloses a solid composition for topical application, which is free of fillers, containing, in an aqueous base, less than 20% of the total weight of the composition of

a hydrophilic gelling system comprising the combination of at least 2% by weight of kappa-carrageenan relative to the total weight of the composition, and at least one hydrocolloid chosen from xanthan gum and cellulose derivatives which are soluble in hot water. The composition is generally in the form of tubes, pencils, or bars and can constitute solid products to care for and/or treat the skin, the scalp, the hair, or mucus membranes, to make up the skin and/or keratin fibres such as the eyelashes and the hair, or to style and/or shape keratin fibres and in particular hair.

European Patent Office Publication No. EP 01687141 A1 discloses an applicator for treating hair. An implement for the cosmetic treatment of hair in the form of a comb, a brush, or a currycomb, characterized in that the teeth, bristles, or ribs coming into contact with the hair consist completely or partly of microporous polymers, but with no hollow space filled with porous material which communicates with the teeth, bristles, or ribs.

D. The Pending Claims Define Over the Cited References

Applicant's claimed apparatus and method are believed to be patentable over the aforementioned references for at least the following reasons. None of the references disclose an apparatus comprising a base and a plurality of skin coloring elements configured to couple to the base, in which each skin coloring element comprises a coloring agent disposed proximate a free end thereof, and in which the coloring agents are adapted to color a desired area of the skin when directed over the desired area through movement of the apparatus substantially parallel to the skin. Applicant respectfully submits that the invention claimed in the above-identified application clearly defines over and is distinguishable from the aforementioned references.

Conclusion

By this Petition to Make Special, Applicant respectfully requests that the above-identified Application be granted special status pursuant to 37 C.F.R. § 1.102(d) (see also M.P.E.P. § 708.02, Subpart VIII).

Enclosed is a check in the amount of **\$130.00** to cover the filing fee specified in 37 C.F.R. § 1.17(i). The Commissioner is hereby authorized to charge any additional fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P. Early and favorable acceptance of this Petition and Application is respectfully requested.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicant



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Date: 11/12/03